

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Section 64.402 of the)	WT Docket No. 01-320
Commission's Rules)	

REPLY COMMENTS OF VERIZON WIRELESS

On November 2, 2001, Verizon Wireless petitioned the Federal Communications Commission ("FCC" or "Commission") for a waiver of Section 64.402 of the Commission's rules in order to allow it to implement a limited form of priority access service ("PAS") requested by the federal government, called "Immediate Service PAS." Verizon Wireless now submits its reply to the few comments filed in response to that waiver request. The record clearly supports granting a waiver.

Verizon Wireless has received comments from seven different commenters addressing the waiver request: three from citizens (Mr. Alan Dixon, Mr. Peter Tannenwald, and Mr. W. Lee McVey), two from local governments (New York City Department of Information Technology and Telecommunications – "New York City", and Montgomery County, Maryland) and two from the wireless industry (Cellular Telecommunications and Internet Association – "CTIA", and VoiceStream Wireless). Of those, CTIA and VoiceStream argue that Verizon Wireless has met the legal standards

for grant of a waiver.¹ Only one commenter, Mr. Dixon, questions the merits of the petition. The other four commenters generally support the waiver request, but in some cases raise issues for the Commission to consider in granting the waiver.

I. EFFECT ON NON-NSEP CALLS

Mr. Dixon and Mr. Tannenwald raise concerns regarding the effect Immediate Service PAS will have on the public's ability to place wireless calls during times of emergency. Mr. Dixon states that 911 calls and calls from non-National Security and Emergency Preparedness ("NSEP") users in emergency situations will not receive priority treatment under Immediate Service PAS.²

The effect PAS will have on non-NSEP calls was fully considered by the Commission in adopting the current PAS rules. In the Second Report and Order in WT Docket No. 96-86, the Commission stated:

Although we recognize that providing priority access to NSEP personnel will mean that there may be times during emergencies when non-NSEP subscribers are not able to obtain access to their wireless services (because NSEP personnel are using the channels), we believe that the benefits of PAS, as described in the record, outweigh any inconvenience to non-NSEP subscribers that result from such use.³

¹ CTIA Comments at 1-3; VoiceStream Comments at 3.

² Alan Dixon's Comments at 2, 8-9.

³ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, *Second Report and Order*, WT Docket No. 96-86, FCC 00-242, 15 FCC Rcd 16720, 16727 (para. 14) (2000) ("PAS Order").

Because the effect on non-NSEP users will not be any greater under Immediate Service PAS than contemplated in the PAS Order, the same analysis the FCC applied in that order should apply to the waiver request.

In addition, several factors will minimize the effect Immediate Service PAS may have on 911 and other non-NSEP calls. First, Verizon Wireless' solution for Immediate Service PAS is designed to give NSEP users one (and only one) set of dedicated digital communications channels (referred to as a "carrier"). Configuring Immediate Service PAS in this manner should enable the NSEP community to complete more wireless calls by managing use of the spectrum that will be dedicated to NSEP use in emergencies. The remaining digital carriers, plus all of the analog capacity in each market, will continue to be available for subscribers.

Second, Immediate Service PAS will only be deployed in a limited number of geographic areas. As a result, the impact Immediate Service PAS may have on the public is far less than originally contemplated in the PAS Order.

Third, among the details being discussed among the National Communications System ("NCS"), its general contractor/integrator, and Verizon Wireless, is an implementation plan for Immediate Service PAS. As part of negotiations on an agreement that would provide for deployment of this service in Washington, D.C., New York City, and Salt Lake City, the parties are working to develop a capability to activate Immediate Service PAS in limited geographic areas within each of these metropolitan areas. By limiting the area where Immediate Service PAS is activated to only those areas where such a capability is absolutely necessary, the effect PAS will have on non-NSEP subscribers will be even further reduced.

Fourth, in any emergency situation where additional capacity is needed, Verizon Wireless would act quickly, as it did on September 11 in New York City, Washington, D.C., and in Somerset County, Pennsylvania, to deploy mobile cell sites to boost the capacity available to all users.

II. THE AVAILABILITY OF IMMEDIATE SERVICE PAS TO LOCAL GOVERNMENT NSEP USERS

The two local government entities and Mr. McVey comment that the Immediate Service PAS capability developed should be made available to key local government officials and NSEP personnel.⁴ Mr. Dixon comments that safeguards need to be in place to prevent NSEP users from abusing priority access.⁵ These issues, however, are not relevant to the pending waiver request. Because Verizon Wireless will not be involved in determining how Immediate Service PAS is used or which NSEP users are given access to an Immediate Service capability, the waiver request does not seek modification to the FCC's rules on assigning priorities or PAS usage. The FCC's rules currently provide that the Executive Office of the President will administer any PAS capability developed, act on requests from state and local governments for priority use status, and issue regulations for the operation and use of any PAS capability. The PAS Order also provides that the FCC will provide regulatory oversight.⁶ Verizon Wireless

⁴ New York City Comments at 3-4; Montgomery County Comments at 2; W. Lee McVey's Comments at 1-2.

⁵ Alan Dixon's Comments at 2-3. Mr. Dixon's concerns, in this regard, are less likely to occur with Immediate Service PAS. This is because Immediate Service PAS will only be activated and available in emergency situations.

⁶ 47 C.F.R. Appendix B, Section 3.

does not see any reason why the same system would not work for Immediate Service PAS.⁷ Indeed, Verizon Wireless understands that NCS is currently in the process of identifying and assigning priorities to potential PAS users.

III. DURATION OF THE WAIVER

Montgomery County comments that the waiver should expire on December 10, 2002. It reasons that NCS is working concurrently on developing a PAS system that is fully compliant with the FCC's rules and that such a capability is targeted for deployment by the end of 2002.⁸

Verizon Wireless does not plan to offer Immediate Service PAS after a fully compliant PAS capability is available. Therefore, it agrees that the duration of the waiver should be limited. Rather than arbitrarily picking a date on which the waiver should expire, however, Verizon Wireless believes that the waiver should remain in effect until the NCS notifies the FCC that a fully compliant PAS capability is available in the markets where Immediate Service PAS is deployed.

⁷ New York City also assumes that Verizon Wireless will be deploying Nortel 1XRTT equipment in New York City, and thus possibly changing its Immediate Service PAS solution in the area within the next year. It asks the FCC to require Verizon Wireless and NCS to fully test both Immediate Service PAS solutions and their effect on system capacity before implementation. New York City Comments at note 3 and page 5. Verizon Wireless notes, in response, that Nortel is not the only vendor it will use for 1XRTT deployment and that it has no plans to deploy Nortel equipment in New York. Nevertheless, before Verizon Wireless deploys Immediate Service PAS in any market, it will conduct tests of the system with NCS.

⁸ Montgomery County Comments at 2.

IV. LIABILITY PROTECTION

A key element of Verizon Wireless' waiver request is that the FCC should extend to Verizon Wireless the same liability protection set forth in paragraphs 22-24 of the PAS Order. The only commenters addressing this issue, CTIA and VoiceStream, agree with Verizon Wireless that the FCC should extend liability protection to any carrier providing PAS service pursuant to an agreement with NCS.

V. CONCLUSION

The Commission should grant Verizon Wireless' request for a waiver of Section 64.402 and Part 64, Appendix B of the Commission's rules. The waiver is necessary to enable Verizon Wireless to continue to work with NCS and its integrator towards an agreement to provide Immediate Service priority access to NSEP users, and is therefore in the public interest. In granting the waiver, the Commission should extend to Verizon Wireless the same liability protection extended to CMRS providers in the FCC's PAS Order.

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Respectfully submitted,

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